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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/687,489	10/16/2003	Stephen L. Tvedten	GET01/P303	9765

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EXAMINER

PRATS, FRANCISCO CHANDLER

ART UNIT	PAPER NUMBER
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1651

DATE MAILED: 03/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/687,489

Applicant(s)

TVEDTEN, STEPHEN L.

Examiner

Francisco C. Prats

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-80 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-80 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

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### **DETAILED ACTION**

Claims 1-80 are presented for examination.

### ***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-11, 15-29, 39-49, 75, 77, 79 and 80, drawn to a process of exterminating pests comprising the use of a protease-containing composition, classified in class 424, subclass 94.63.
- II. Claims 12-14, 74 drawn to a process of exterminating pests comprising the use of a composition comprising a protease and another enzyme, classified in class 424, subclass 94.1.
- III. Claims 30-38, 73, 74, drawn to a process of exterminating pests comprising the use of a composition comprising a protease and an enzyme-containing yeast fermentate, classified in class 424, subclass 93.51.
- IV. Claims 50-59, drawn to a process of exterminating pests comprising the use of a composition comprising a protease and a nitrogen source, classified in class 424, subclass 94.63.

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- V. Claims 60-63, 76, 78 drawn to a process of exterminating pests comprising the use of a composition comprising a protease and a plant oil or extract, classified in class 424, subclass 725.
- VI. Claims 64-72, drawn to a process of exterminating pests comprising the use of a composition comprising a protease and alcohol, hydrogen peroxide, glycerin, borax, pest hormones, and growth regulators, or analogs thereof, botanical pesticides and soluble or suspendable aluminum compounds, classified in class 424, subclass 94.63. As an aside note that the claim reads as if all of the named ingredients are required, not alternative additives.

The inventions are distinct, each from the other because of the following reasons:

Inventions II through VI are related to invention I as combinations and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). The combinations do not require the particulars of the subcombination as claimed for patentability

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because the combinations, due to the presence of additional ingredients, would be patentable even if the subcombination was known and obvious, assuming that the prior art did not teach or suggest the presence of the additional ingredients recited in the combination claims. Moreover, the subcombination has separate utility such as the treatment of substrates so as to clean them, proteases and detergents being well known components of cleaning compositions.

This application contains claims directed to the following patentably distinct species:

- (a) the attractants recited in claim 7;
- (b) the enzymes recited in claims 12-14;
- (c) the nitrogen sources recited in claim 51;
- (d) the plant extracts/oils recited in claim 61;
- (d) the compounds recited in claim 65;
- (e) the pesticides recited in claim 66;
- (f) the aluminum compounds recited in claim 69;
- (g) the plant extracts/oils recited in claim 76.

The species are independent or distinct because the ingredients recited in each of (a) through (g) above each has a different chemical structure, and therefore has different physical properties, and also requiring a distinct search.

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Therefore, **in addition** to the selection from among groups I-VI above, applicant is **also** required under 35 U.S.C. 121 to elect **a single disclosed species from each of (a) through (g)** above, for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1-6 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

**Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be**

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**traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.**

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

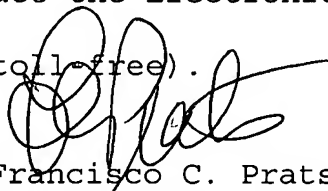
Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Francisco C. Prats whose telephone number is 571-272-0921. The examiner can normally be reached on Monday through Friday, with alternate Fridays off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Wityshyn can be reached on 571-272-0926. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Francisco C. Prats  
Primary Examiner  
Art Unit 1651

FCP